

FROM: WINSTON & STRAWN LLP

REMARKS

Claims 1, 3-7, 11-14, 23 and 26, as amended, are currently pending and appear in this application for the Examiner's review and reconsideration. In particular, independent claims 1, 23 and 26 were amended to recite that the fireproofing agent is selected from the group consisting of sodium silicate, potassium silicate, monoammonium phosphate or carbonate, diammonium phosphate, mono-, di- or trisodium phosphate, sodium hypophosphite, melamine cyanurate, and mixtures thereof. This claim is supported by the specification and the dependent claims, such as claim 2. Claims 2, 8-10, 15-22 and 24-25 have been cancelled. These changes reduce the issues for appeal by placing the claims in condition for allowance so that they all should be entered at this time.

The objection of the claims under the second paragraph of 35 USC §112 is overcome by amending the independent claims to omit the term "chlorinated hydrocarbons".

The presently pending claims were rejected under 35 USC §102(e) as being obvious over US patent 6,555,098 to Murphy et al. ("Murphy") for the reasons set forth on pages 3-4 of the action. Applicant traverses this rejection.

Present claim 1 relates to a microcapsules comprising a perfuming or flavoring ingredient as well as a fireproofing agent, wherein the fireproofing agent is selected from the group consisting of sodium silicate, potassium silicate, monoammonium phosphate or carbonate, diammonium phosphate, mono-, di- or trisodium phosphate, sodium hypophosphite, melamine cyanurate, and mixtures thereof. Murphy, in mentioning sodium bicarbonate or sodium carbonate as an additive, thus does not destroy the novelty of present claims which specifically recite compounds not disclosed by Murphy. Nor does the disclosure in Murphy teach or suggest the use of any of the other additives claimed or the other features of the present claims.

Murphy discloses a coating, rather than a spray dried microcapsule comprising both a fireproofing agent and fragrance ingredient. Claim 1 differs from the entire teaching of Murphy in another point. Present claim 1 claims a spray-dried microcapsule comprising both, a perfuming (or flavoring) ingredient as well as a fireproofing agent. The capsules of Murphy are not spray dried. The text position cited in the office action exclusively refers to the bicarbonate powder as such, not yet being coated on the perfuming ingredient. In Murphy, the aqueous dispersion is atomized and sprayed into heated air to remove the aqueous phase, and to provide a free-flowing polymer-encapsulated bicarbonate powder product. (col. 2, lines 60-65). In other

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words, only the bicarbonate powder, free of fragrance materials, is obtained by spray drying, and this is done to prepare it for addition to the other ingredients. Since the present invention does not use sodium carbonate or sodium bicarbonate and further encapsulates a fireproof material with the perfuming ingredients, the Murphy patent is not relevant to the patentability of the present claims.

In contrast to the present use of encapsulation, Murphy instead discloses coating processes as ways of combining the bicarbonate powder and the fragrance. The application of the polymer coating to the ingredient crystallite surfaces is accomplished by conventional means such as pan coating, fluidized coating, centrifugal fluidized coating and the like [...](col. 2, lines 48-59). The examples of Murphy confirm the description by utilizing fluidized bed (Example 1) and coating in a rotating evaporator (Example 2, lines 41-43).

Also, the text of the general description as well as the examples of Murphy do not disclose a single, spray-dried microcapsule which contains both the fragrance ingredient as well as a fireproofing agent. To the contrary, Murphy teaches coating of a fragrance crystallites with bicarbonate powder, the coating solution containing a polymer ingredient. The coated crystallites of Murphy are thus totally different from the spray dried microcapsules of the present invention, notably also in terms of intersectional structure.

The spray-dried microcapsule of claim 1, as well as that of the method of claim 7, require the presence of a fragrance or flavoring ingredient in liquid form. This can be illustrated by claim 7, which recites that an aqueous emulsion of the perfuming or flavoring ingredient is used in as carrier polymeric material. Emulsions are suspensions of hydrophobic liquids in hydrophilic ones, or vice versa. The term "emulsion" does thus exclude crystalline organic fragrance compounds as disclosed by Murphy. In the same line, if the fragrance material is not present in liquid, emulsified form, it could not be spray dried as required by present claim 1.

It is noted that the recitation "spray-dried" in present claim 1 defines microcapsules that are obtained in a completely different way from what is disclosed by Murphy. Consequently, such products have a different structural organization and different features, and Murphy's products are excluded from the scope of present claims due to this recitation.

Claim 7 is further distinguishable from Murphy due to the recitation "an aqueous emulsion of the perfuming or flavoring ingredient in the carrier polymeric material." As noted above, Murphy teaches crystallite organic fragrance compounds (see above). Murphy does not

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disclose or teach the spray-drying an emulsion comprising both, a fireproofing agent and a perfuming or flavoring ingredient. In contrast, as noted above, Murphy teaches the coating of a (spray dried) bicarbonate powder onto crystallite fragrances by typical coating procedures, such as fluidized bed coating. As the Examiner correctly states, in addition and as a logic consequence of the different teachings, Murphy does not disclose the step of adding a fireproofing agent to an aqueous emulsion.

Accordingly, the present invention as claimed is thus different from Murphy and cannot be obtained from it in any obvious ways. In view of the preceding explanation, the entire application is believed to be in condition for allowance, early notice of which would be appreciated. Should any issues remain, a personal or telephonic interview is respectfully requested to discuss the same in order to expedite the allowance of all the claims in this application.

Respectfully submitted,

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Allan A. Fanucci

(Reg. No. 30,256)

WINSTON & STRAWN LLP

Customer Number 28765

(212) 294-3311